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STATE OF HAWAII
DEPARTMENT OF EDUCATION

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

NOV 22 2006 AG
at 3 o'clock and 20 min
SUE BENITA, CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

ROBERT SHEREZ,

Plaintiff,

vs.

STATE OF HAWAII DEPARTMENT
OF EDUCATION; PATRICIA
HAMAMOTO, Superintendent of
Hawai'i Schools, MEREDETH
MAEDA, Principal, Castle High
School; SARA GRONNER OR
GRONNA, Vice Principal of Castle
High School,

Defendants.

CIVIL NO. 04-00390 HG-KSC

DEFENDANT STATE OF HAWAII,
DEPARTMENT OF EDUCATION'S
MOTION TO DISMISS SECOND
AMENDED COMPLAINT FILED
ON DECEMBER 21, 2005 FOR
LACK OF SUBJECT MATTER
JURISDICTION; MEMORANDUM
IN SUPPORT OF MOTION TO
DISMISS; CERTIFICATE OF
SERVICE

DEFENDANT STATE OF HAWAII, DEPARTMENT OF EDUCATION'S
MOTION TO DISMISS SECOND AMENDED COMPLAINT FILED ON
DECEMBER 21, 2005 FOR LACK OF SUBJECT MATTER JURISDICTION

Defendant State of Hawai'i, Department of Education, by and through its attorneys, hereby moves this Honorable Court for an Order dismissing Causes of Action III, IV, V, VI, and VII asserted against it contained in Plaintiff's Second Amended Complaint filed on December 21, 2005 because the Court lacks jurisdiction to adjudicate these claims. Further, Defendant State of Hawai'i, Department of Education hereby moves that the same claims asserted against the official capacities of all named individual defendants be dismissed as well, since a suit against a state official in that person's official capacity is the same as an action against a state. Kentucky v. Graham, 473 U.S. 159, 166-67 (1985).

This Motion is made pursuant to Rule 12(b), Federal Rules of Civil Procedure and Rule 7.2 of the Local Rules of Practice for the United States District Court for the District of Hawai'i, and is supported by the attached memorandum

and the pleadings in this case and in the related case, Civil No. 06-00367 SPK-KSC.

DATED: Honolulu, Hawai'i, November 22, 2006.



NELSON Y. NABETA
Deputy Attorney General

Attorneys for Defendant
STATE OF HAWAII,
DEPARTMENT OF EDUCATION